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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,062	11/03/2003	Wilson A. Felknor	148-007-1	3137

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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/700,062

Applicant(s)

FELKNOR ET AL.

Examiner

Francis T. Palo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because they are poor quality, specifically; the element numbers and figures are not well defined and the drawing sheets are not clean (speckled).

The drawings are objected to because in Figure-4, "54" should be --52--?

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application.

Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended.

The figure or figure number of an amended drawing should not be labeled as "amended."

If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures.

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If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: numerous typographical errors are evident, specifically;

On page-7, at line-1 (op n-topped),

On page-8, at line-1 (b),

On page-9, at line-26 (rec ss),

On page-10, at line-3 (th),

On page-11, at line-1 (memb r),

On page-12, at line-1(f rtilizer), and line-26 (m mbers, th),

On page-13, at lines 2 and 3 (th), and line-26 (direct d, th reof),

On page-15, at line-1 (w t).

Appropriate correction is required.

On page-1, at line-22; "still object" should be --still another object--.

On page-5, at line-15; "Fig. 1" should be --Fig. 2--.

On page-8, at lines 11 and 24; "ribs" should be --ribs 68--,

and "46" should be --48--.

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On page-9, at line-5; "where is" should be --where it is--.

On page-10, at line-4; "24" should be --22--.

On page-14, at line-9; "it" should be --is--.

Appropriate correction is required.

### ***Claim Objections***

Claims 4, 6 and 16 are objected to because of the following informalities:

In claim-4; "d fined" should be --defined--.

In claim-6; "includes" should be --including--.

In claim-16; "compartm nt" should be --compartment--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 1-8, 11-18 and 20** are rejected under 35 U.S.C. 102(b),

as being anticipated by Feldman (US 6,298,600) 2001.

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**Regarding independent claims 1 and 11:**

Feldman '600 discloses (Title) and depicts (Figures 1-5) a suspended planter to grow plants from the base comprising a container (10) and retaining members (30 and 40) as cited in the instant claim.

**Regarding claim-2:**

The discussion above regarding claim-1 is relied upon.

Feldman '600 depicts a retaining member (30) positioned and prevented as cited in the instant claim.

**Regarding claims 3, 12 and 13:**

The discussion above regarding claim-2 is relied upon.

Feldman '600 depicts a retaining member (30) having a slit (31) as cited in the instant claim; Feldman while not specifically disclosing a foam body form as cited, does disclose the retainer member (30) as a "supple disk" (column-3, lines 35 and 36) which is readable and capable of foam form as cited.

**Regarding claims 4 and 14:**

The discussion above regarding claim-3 is relied upon.

Feldman '600 depicts means (40) associated with the container bottom for preventing the retainer member (30) from falling through the hole.

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Regarding **claims 5 and 15**:

The discussion above regarding claim-4 is relied upon.

Feldman '600 depicts means (43) depicted in Figure-3 as cited in the instant claim.

Regarding **claims 6, 7, 16 and 17**:

The discussion above regarding claim-1 is relied upon.

Feldman '600 depicts a porous (52, 55) divider (50) in Figure-1 for separating the container into an upper and lower compartment as cited in the instant claims.

Regarding **claims 8 and 18**:

The discussion above regarding claim-7 is relied upon.

Feldman while not specifically disclosing a foam body form divider (50) as cited, does disclose injection molding of the container (10), (column-2, lines 55-59); the divider means (50) is therefore readable also as capable of injection molding, and as such capable of foam construction.

Regarding **claim-20**:

The discussion above regarding claim-11 is relied upon.

Feldman depicts in Figure-1 means (20) for supporting the planter from an elevated support as cited.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 9 and 19** are rejected under 35 U.S.C. 103(a),  
as being unpatentable over Feldman (US 6,298,600) 2001.

Regarding claims **9 and 19**:

The discussion above regarding claim-7 is relied upon.

Feldman depicts a single divider means (50), and is silent as to a plurality of dividers as cited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the planter of Feldman to have more than one divider means (50), as it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

**Claim-10** is rejected under 35 U.S.C. 103(a),  
as being unpatentable over Feldman as applied to claim-1 above,  
and further in view of Green (GB 2147484A) 1985.



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Regarding **claim-10**:

The discussion above regarding claim-1 is relied upon.

Feldman disclose injection molding (column-2, lines 55-59) of the container (10), and is silent as to a bag as cited in the instant claim.

Green '484, discloses tubular flexible sheet plastic construction as prior art for tubular planters (column-1, lines 13-17), and further discloses the device of Green to be preferably made of polyethylene (readable as a bag having flexible sidewalls).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the planter of Feldman to be constructed with flexible sidewalls as cited and as taught by Green, for the known advantages of that construction.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Moses '922 teaches an upside planter.

Mendes '409 teaches a planter for downward plantings.

Perez '651 teaches a planting apparatus combining flexible walls and a solid base.

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Sandman '861 teaches an apparatus and method for growing vegetables from the bottom of a container.

Souris AU'065 teaches an apparatus and method for growing vegetables from the bottom of a container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

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Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Francis T. Palo*

Francis T. Palo  
Examiner  
Art Unit 3644

FP